

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BALBOA CAPITAL CORPORATION,)
)
Plaintiff,)
)
v.) Case No. 1:13-cv-06503
)
GRAPHIC PALLET AND TRANSPORT, INC.,)
JOHN KRAWISZ, individually, and CHRISTY)
KRAWISZ, individually,)
)
Defendants.)

DEFENDANTS' MOTION FOR RELIEF FROM FINAL JUDGMENT

NOW COME Defendants, GRAPHIC PALLET AND TRANSPORT, INC., JOHN KRAWISZ, and CHRISTY KRAWISZ, by and through their attorneys, MOMKUS McCLUSKEY, LLC, and for their Motion for Relief from Final Judgment Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, state as follows:

INTRODUCTION

1. On February 26, 2015, this Court entered an order of judgment in favor of Plaintiff and against Defendants in the amount of \$199,043.18. (Doc. No. 59).

2. Subsequently, Defendants and Plaintiff agreed that, in consideration of a lump sum payment of \$190,000 from Defendants, Plaintiff would discharge its citations against Defendants and fully release and discharge the judgment against Defendants.

3. Defendants made a lump sum payment in the amount of \$190,000 to Plaintiff on May 28, 2015 in full performance of their obligations under the parties' agreed settlement.

4. However, Plaintiff has thusfar failed and refused to discharge and/or release Defendants from the February 26, 2015 judgment.

5. Rule 60(b) of the Federal Rules of Civil Procedure provides that:

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

* * * * *

(5) the judgment has been satisfied, released or discharged; . . ."

Fed.R.Civ.Pro. 60(b).

6. Defendants therefore request that this Court enter an order reflecting that the February 26, 2015 judgment has been satisfied and released in conformance with the parties' settlement agreement.

DISCUSSION

7. Following this Court's entry of its February 26, 2015 judgment against Defendants, the parties began settlement negotiations.

8. On May 13, 2015, Plaintiff agreed to release its judgment against Defendants in exchange for a lump sum payment in the amount of \$190,000. A true and accurate copy of the email exchange between counsel for Plaintiff and Defendants memorializing the agreement is attached hereto as Exhibit A.

9. On May 28, 2015, funds totaling \$190,000 were transferred to Plaintiff pursuant to the parties' agreement. A true and accurate copy of Bank of America emails confirming these transfers are attached hereto as Exhibit B.

10. Thereafter, counsel for Defendants contacted counsel for Plaintiff to confirm that the funds were transferred and to request that Plaintiff execute a Release and Satisfaction of Judgment. A true and accurate copy of emails dated May 28, 2015 and June 17, 2015 are attached hereto as Exhibit C.

11. On June 3, 2015, Plaintiff voluntarily dismissed the third-party citations it had previously issued in this action, but Plaintiff did not execute or file a release and satisfaction of judgment. (Doc. Nos. 66 and 67).

12. Plaintiff has not denied that it received the settlement funds or that Defendants have fully complied with the terms of the parties' settlement agreement. Rather, once the funds were transferred on May 28, 2015, Plaintiff simply stopped responding to Defendants' communications.

13. Accordingly, Defendants are left with no choice other than to petition this Court to enter an order reflecting that its February 26, 2015 judgment has been satisfied and released pursuant to settlement.

14. Rule 60(b) of the Federal Rules of Civil Procedure provides this Court with the authority to enter an order confirming that this Court's February 26, 2015 order has been satisfied and released through Defendants' full performance under the settlement agreement reached between the parties on May 13, 2015.

WHEREFORE, Defendants, GRAPHIC PALLET AND TRANSPORT, INC., JOHN KRAWISZ, and CHRISTY KRAWISZ, request that this Honorable Court enter an order declaring that its February 26, 2015 order against Defendants has been satisfied and released, and for any other or further relief that this Court deems just and equitable.

Respectfully Submitted,

MOMKUS McCLUSKEY, LLC

By: /s/ James F. McCluskey

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